

CR15-00707-PHX-SRB STEWART WHITSON-PART#1 2-26-16

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,)	
)	
Plaintiff,)	
)	CR15-00707-PHX-SRB
vs.)	Phoenix, Arizona
)	February 26, 2016
Abdul Malik Abdul Kareem,)	
)	
Defendant.)	
)	
)	

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE
EXCERPT OF REPORTER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY #8

TESTIMONY: SPECIAL AGENT STEWART WHITSON - PART #1
(Pages 1-64, Inclusive.)

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E X C E R P T O F P R O C E E D I N G S

THE CLERK: Please state your name for the record spelling your first and last name.

THE WITNESS: Stewart Whitson. S-T-E-W-A-R-T.
W-H-I-T-S-O-N.

MS. BROOK: Just one moment.

SPECIAL AGENT STEWART WHITSON, WITNESS, SWORN

DIRECT EXAMINATION

BY MS. BROOK:

Q Good afternoon.

A Good afternoon.

Q Would you please introduce yourself one more time to ladies and gentlemen of the jury.

A Hi. I'm Special Agent Stewart Whitson with the Federal Bureau of Investigation.

Q And, sir, what is your current assignment?

A I'm a Special Agent assigned to a National Security Squad and I investigate counterterrorism matters.

Q How long have you been with the FBI?

A Just under five years.

Q And what is your educational background before you joined the FBI?

A I obtained a Bachelor of Arts in Political Science with a minor in History, along with a Juris Doctorate from the University of Minnesota. And I'm currently pursuing a

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1 master's degree from George Washington University in Safety
2 and Security Leadership with an emphasis on strategic security
3 studies.

4 Q Prior to joining the FBI, where were you employed?

5 A I was a U.S. Army Infantry Platoon Leader and then later a
6 Company Commander.

7 Q And the later what?

8 A A Company Commander in the infantry.

9 Q At some point did you become an officer within the
10 military?

11 A Yes, I was an officer.

12 Q In that capacity, were you ever deployed?

13 A Yes.

14 Q Where were you deployed to?

15 A I was deployed to Iraq for 16 months in 2005 to 2007.

16 Q And as an officer deployed in Iraq, just briefly, what
17 were some of your duties there?

18 A Well, essentially, I had an area of -- well, I spent some
19 time between Ramadi and Fallujah, but most of my time near
20 Baghdad. And I had an area of the city that I was there to
21 help take care of, to provide safety and security, built an
22 elementary school, pharmacy, that kind of thing. So just kind
23 of met with Imams and sheikhs and things like that in the
24 area.

25 Q So fast-forwarding, then at some point, obviously, five

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1 years ago you became a Special Agent within the FBI.

2 At some point did you become the lead case agent in
3 the investigation against Abdul Malik Abdul Kareem?

4 A Yes.

5 Q And as it relates to him, prior to May 5th of 2015, did
6 you know him?

7 A No.

8 Q Historically, are you aware of an investigation the FBI
9 had into Elton Simpson?

10 A Yes.

11 Q And were you ever involved in that particular case?

12 A No.

13 Q I want to start off and talk about an interview that you
14 conducted on May 5th of 2015. On that day did you happen to
15 interview Abdul Malik Abdul Kareem?

16 A Yes.

17 Q And here --

18 THE COURT: How about, Agent Whitson, could you speak
19 more closely to the microphone?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Thank you.

22 BY MS. BROOK:

23 Q Here with us in the courtroom today, do you see him?

24 A Yes.

25 Q Can you point to him and identify something that he's

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1 wearing.

2 A He's the gentleman in the long-sleeved collared shirt,
3 blue.

4 MS. BROOK: Your Honor, may the record reflect the
5 witness has identified the defendant?

6 THE COURT: Yes.

7 BY MS. BROOK:

8 Q So how was it on that day on May 5th that you became
9 involved in conducting that particular interview?

10 A On May 5th, the morning of May 5th, I was asked by my
11 supervisor to assist in the interview of Mr. Kareem.

12 Q And on that day on May 5th, was the defendant a suspect in
13 the investigation?

14 A No.

15 Q We've heard, and obviously, you have been here as the lead
16 case agent, so you have heard Detective Nash testify about him
17 being there during that interview and taking notes.

18 Other than you and Detective Nash, were there any
19 other agents that were involved in that interview that day?

20 A No.

21 Q So let's talk about the setup of that interview.

22 How was it that the defendant came to the FBI to
23 partake in that particular interview?

24 A Sometime prior -- early in the morning, I guess, that day
25 Detective Nash had reached out to Mr. Kareem via telephone and

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1 asked him whether he would be willing to voluntarily come into
2 the office to speak with investigators.

3 Q Did you do anything to set up an interview room?

4 A Yes.

5 Q What did you do?

6 A So while he coordinated with Mr. Kareem to see if
7 Mr. Kareem would be willing to come in, I set up the interview
8 room we would use and then I sought to acquire a recording
9 device to use during that interview.

10 Q So you sought out a recording device to use in that
11 particular interview. Is it a priority of yours to record
12 interviews that you conduct as part of an ongoing
13 investigation?

14 A It depends on the situation.

15 Q And explain that a little bit.

16 A Well, so a lot of the interviews we do may be in an
17 environment that isn't necessarily safe or conducive for
18 conducting recordings. So if we're going into a place of
19 known crime or we're interviewing someone that we know to be
20 dangerous, I may not want to worry about messing with the
21 recording device while I'm conducting the interview.

22 But, typically, when it's going to be something in
23 the office or something such as this interview was, I would
24 try to record it. That would be my practice.

25 Q And what was your first step that day in an attempt to

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1 record the interview? Did you select a particular room?

2 A Yes. So my first effort was to obtain a room that we
3 already had wired for video and audio but that room was taken.
4 Because of the investigation, lots of people were being
5 interviewed. So then I needed to find an alternate location.

6 Q Okay. And just to be clear, on that day was the defendant
7 under arrest?

8 A No.

9 Q And was he in any way ordered to come down to the FBI to
10 partake in an interview?

11 A No.

12 Q Did you reach out to Special Agent Brian Taylor within the
13 FBI?

14 A Yes.

15 Q And who is Brian Taylor? What's his position within the
16 FBI?

17 A He's a Special Agent that deals with technical matters,
18 recording devices, and things like that.

19 Q And so did -- is he a technically-trained Special Agent that
20 assists with setting up recording devices?

21 A Yes.

22 Q Did you enlist his help to set up the recording device in
23 the particular room that you had the defendant in for an
24 interview?

25 A Well, initially, I just requested a device to use. But

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1 Special Agent Taylor let me know that he already had a room
2 wired for audio and video and asked if I wanted to use that,
3 which, of course, I said, yes, if you already have that wired
4 for audio and video, that would work out perfectly.

5 Q So how was it the defendant appeared at the FBI that day?
6 Did he -- how did he get there, do you know?

7 A I believe he drove himself. He -- we didn't go get him.
8 He somehow showed up at our office at the time when he was
9 supposed to and then Detective Nash went out to greet him.

10 Q At some point did you greet him within the FBI?

11 A Yes.

12 Q And where was it that you greeted him?

13 A I greeted him -- so we have a door that leads into a lobby
14 area at our office. And then there's another door that leads
15 into the area with the interview rooms. And so I greeted him
16 at that other door that leads into where the interview rooms
17 are.

18 Q And did he come with you into the interview room?

19 A Yes.

20 Q And the interview room, just explain the setup of it. How
21 many total -- once you got in there with him, how many people
22 were inside the interview room?

23 A There were three of us.

24 Q Okay. So it was you, Detective Nash, and the defendant?

25 A Yes.

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1 Q And the room that you're in, is the door locked?

2 A No.

3 Q And do you express to an individual when you're
4 interviewing them in these circumstances that they are free to
5 leave and it's a voluntary interview?

6 A Yes.

7 Q What do you say?

8 A So my --

9 THE COURT: Could I ask that instead of asking it
10 theoretically, if you could ask about what he did that day?
11 BY MS. BROOK:

12 Q So let's focus in right on this particular interview.
13 What did you say to the defendant in terms of it being a
14 voluntary interview?

15 A Well, as soon as he came into the room with us, I thanked
16 him, told him how much we appreciated that he had voluntarily
17 come into the office, that obviously, he understood with what
18 had happened in Texas that we were interviewing lots of people
19 and so that it made our job a lot easier for people to be
20 willing to come in and do it like that and sincerely thanked
21 him for doing that.

22 Q Okay. Approximately, how long was the interview?

23 A Just under two hours.

24 Q And at any point during the interview, did you leave the
25 room?

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1 A No.

2 Q At any point during the interview did Detective Nash leave
3 the room?

4 A No.

5 Q And at any point did the defendant leave the room?

6 A No.

7 Q At any point did he express that he wanted to leave the
8 room?

9 A No.

10 Q At any point did he express that he didn't want to talk to
11 you?

12 A No.

13 Q How did he appear during the interview? Did he look sick
14 at all?

15 A No.

16 Q Did he appear to be sweating at all?

17 A No.

18 Q Did he appear to be struggling to communicate with you at
19 all?

20 A No. Not at all.

21 Q Did he seem uncomfortable at all?

22 A No. I think, you know, once we got into the conversations
23 about Simpson, I think you could see him kind of well up with
24 tears as we were talking about that. But other than that, he
25 seemed perfectly comfortable.

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1 Q Did you ask him if he knew Elton Simpson and Nadir Soofi?

2 A Yes.

3 Q And what did he say?

4 A He said he did know them.

5 Q Did he know that they were both killed on May 3rd of 2015,
6 so two days before?

7 A Yes.

8 Q And, initially, did he tell you that to his knowledge,
9 Simpson didn't have an AK?

10 A Yes, initially.

11 Q And by "AK," what does that mean?

12 A He said an AK-47, which I understood, based on the context
13 of the conversation, to be an AK-47 assault rifle.

14 Q Then what happened next?

15 A Then -- so after he said that, we asked him further
16 questions. And then he corrected himself and said that he had
17 seen an AK-47.

18 Q Did you ask him if he had ever gone shooting with Simpson
19 or Soofi?

20 MR. MAYNARD: Objection, Your Honor. It's leading.

21 THE COURT: I don't think that was. Overruled.

22 THE WITNESS: So, yes. I did ask him if he had gone
23 shooting with Simpson and Soofi.

24 BY MS. BROOK:

25 Q And what did he say?

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1 A He said no.

2 Q Did he say anything about Simpson ever asking him to go
3 shoot with him?

4 A Yes.

5 Q What did he say?

6 A He said that they had asked him to go shooting and had
7 specified that they didn't want to do it at a range. They
8 wanted to do it somewhere out in the desert in order to avoid
9 law enforcement detection. And he said that his response was
10 he declined to do that.

11 Q Did he make any statements about whether or not Simpson
12 and Soofi had gone shooting with the weapons that they used in
13 connection with the attack?

14 A He stated that to the best of his knowledge, they had not
15 ever fired the weapons that they ultimately used in Garland.

16 Q Did he make any statements about whether he had seen
17 Simpson or Soofi with body armor, military gear, or vests?

18 A Yes.

19 Q What did he say?

20 A He specifically said that he had not seen body armor,
21 other kind of tactical gear, backpacks, things of that nature.

22 Q At some point during the conversation did the defendant
23 say who he thought Simpson and Soofi may be influenced by?

24 A Yes.

25 Q And who was that?

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1 A He described him as a radical salafi Jamaica-based
2 scholar named Faisal.

3 Q And based upon your training and experience, your work
4 within the JTTF, the Joint Terrorism Task Force, do you know
5 what Sheikh Faisal is?

6 A Yes.

7 Q Who is he?

8 A Sheikh Faisal is a Jamaica-based radical cleric. He was
9 someone that supported the al-Qa'ida and the Arabian Peninsula
10 and al-Qa'ida in general before the emergence of the Islamic
11 State.

12 And then when the Islamic State announced its
13 khalifate on June 29th of 2014, he was one of the first
14 English-speaking clerics to come out in support of them. And
15 so he delivered lectures and things like that in support of
16 the Islamic State.

17 Q Did the defendant say whether or not he too followed or
18 watched Sheikh Faisal?

19 A The defendant said he did not.

20 Q And let me take a step back.

21 So in this case during the course of its
22 investigation, did you find evidence of Sheikh Faisal lectures
23 on the defendant's Acer computer?

24 A Yes.

25 Q Where else did you find evidence of Sheikh Faisal

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1 lectures?

2 A We also found two to three -- I believe it was three
3 separate Sheikh Faisal CDs in Simpson and Soofi's apartment
4 located on 19th Avenue.

5 Q In the beginning of the interview -- I want to go back to
6 is the interview itself -- did you warn the defendant that
7 lying to the FBI is a crime?

8 A Yes.

9 Q Did you ask him if he had heard or whether or not he knew
10 of the Draw The Prophet Muhammad Contest in Garland, Texas,
11 before the attack happened?

12 A Yes.

13 Q And what did he say?

14 A He said he had not heard of the attack -- or heard of the
15 event at all until after the attack took place.

16 Q Did you ask him whether or not he knew in advance that
17 Simpson or Soofi planned to conduct an attack on the contest?

18 A I did.

19 Q And what did he say?

20 A He said he did not know that they planned to do that.

21 Q At some point during the course of your conversation with
22 the defendant, did he tell you that he only talked to Simpson
23 on one particular phone, that he only had one phone?

24 A Yes.

25 MR. MAYNARD: Objection. Leading.

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1 THE COURT: That one was. Sustained.

2 BY MS. BROOK:

3 Q What did he say about the way in which he contacted
4 Simpson by using a phone?

5 A During the interview he mentioned that Simpson had two
6 phones but that there was only one phone that he communicated
7 with and that the other phone Simpson had, Simpson didn't
8 share that number with anyone else and that Simpson
9 communicated with a woman based in Canada using that phone.
10 But that Mr. Kareem only called him on the other phone.

11 Q In the week before the attack, what did the defendant
12 describe as his contact with Simpson?

13 A During this interview the defendant said he had -- that
14 they had essentially cut off communications with him the week
15 prior to the attack, that Simpson was not returning his phone
16 calls.

17 Q Did he state anything about a Friday night dinner that
18 Simpson didn't show up to?

19 A Yes.

20 Q What did he say?

21 A May I check my notes?

22 Q Please.

23 MR. MAYNARD: Your Honor, can I inquire as to what
24 the agent is looking at?

25 THE COURT: Yes.

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1 THE WITNESS: I'm looking at my report dated May 5th,
2 2015. It's an FD-302 that I drafted following that interview.

3 BY MS. BROOK:

4 Q And what did he say?

5 A He said that he had seen Simpson on May 1st at the mosque.
6 That he had confronted him about canceling the reservations
7 and that he had invited him and others to have a dinner at his
8 house.

9 Q Did he also say that before that point that week he hadn't
10 seen him?

11 A May I review my notes?

12 Q Please.

13 A Yes. He said one week prior that he had -- Simpson had
14 cut off communications with him and then he had suddenly
15 received a text message from Simpson on April 30th.

16 Q I want to go back for a second.

17 Defense counsel mentioned the report that you have.
18 So after you completed this interview, did you draft a report?

19 A Yes.

20 MR. MAYNARD: Objection, Your Honor, to the form of
21 the question. I never mentioned a report.

22 THE COURT: He just asked what report it was after
23 Whitson asked, but nevertheless, the answer will stand.

24 BY MS. BROOK:

25 Q So after the interview that you conducted with the

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1 defendant, did you create a report?

2 A Yes.

3 Q And how many pages is it?

4 A It's four pages.

5 Q How soon after the interview itself was completed did you
6 sit down and write out the report?

7 A Within 24 hours.

8 Q And what did you use to assist you in creating that
9 report?

10 A I used interview notes created primarily by my partner
11 Detective Nash. I also had some interview notes myself. And
12 I also relied upon my memory and the memory of Detective Nash.

13 Q Is it important as you're trained to generate your reports
14 close in time to the interview itself?

15 A Yes.

16 Q And why is that?

17 A The memory is fresh in your mind so it will tend to be
18 more accurate the sooner you can do it.

19 Q I want to ask about one more question related to the
20 interview.

21 Did you ask the defendant if Simpson or Soofi had
22 asked him to participate in the attack?

23 A Yes.

24 Q And what did he say about that?

25 A He said that they had not asked him to participate in the

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1 attack.

2 Q Did he say "that attack" or "any attack"?

3 A He said -- they had not asked him to participate in that
4 attack or any attack.

5 Q After the interview was over, did the defendant leave the
6 interview room?

7 A Yes.

8 Q And how did that happen?

9 A Once the interview came to a conclusion, we told -- we
10 again thanked him for coming in voluntarily and for his time
11 and we escorted him out.

12 And so we kind of got to that same door where I had
13 met him before. The interview equipment was in an adjacent
14 room that's located right next to that opening, so I stopped
15 in that doorway where that opening is and said my good-byes
16 there and then Detective Nash continued into the lobby with
17 Mr. Kareem.

18 Q Did you at some point go in to stop the recording
19 equipment?

20 A Yes.

21 Q Who as it that initially started the recording equipment
22 before the interview began?

23 A Special Agent Taylor.

24 Q And had you worked out --

25 Well, how do you know that he was going to start the

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1 equipment?

2 A So prior to conducting the interview, I had come down and
3 Special Agent Taylor had kind of given me a quick orientation
4 to the equipment, how it would work, that kind of thing. And
5 we developed a plan of how it would work. And essentially he
6 would --

7 Well, first we did tests to make sure the camera
8 where it was positioned would be able to see Mr. Kareem and
9 see us, that our heads wouldn't block it, that kind of thing,
10 because it was located behind us.

11 So after we had done those tests, then we developed a
12 plan whereby I would give him a thumbs up when I was ready for
13 him to start the recording. He would give me a thumbs up to
14 let me know the recording was actually going. And then I
15 would open those two doors that led to the lobby and allow
16 Mr. Kareem to come in.

17 That way the recording would be rolling before he
18 came into the room and not start, you know, after he was in
19 there, that kind of thing.

20 Q And before the interview started, did you give Special
21 Agent Taylor the thumbs up as you had planned on doing?

22 A Yes.

23 Q And at the end of the interview, what was the plan for how
24 the recording equipment would be stopped?

25 A And so the plan was he would start the equipment. And

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1 then once it was over, all I had to do was come in and there
2 was a single button to push on this equipment. And so he had
3 explained that to me. And he said: When you push that, that
4 will stop it and it will also eject an SD card which was the
5 digital media that the recording would go onto.

6 We would then, obviously, take that card and we would
7 bring it to our electronic surveillance folks who then, you
8 know, keep that as evidence and make copies of it, that sort
9 of thing.

10 Q So did you and Detective Nash, after the conclusion of the
11 interview, go back into the interview recording equipment room
12 and press Stop like you were told to do by Special Agent
13 Taylor?

14 A Yes.

15 Q And did the SD card eject out of the system?

16 A Yes.

17 Q And was the SD card placed into property and evidence?

18 A Yes.

19 Q At some point after the interview did you become aware
20 that the interview itself did not download and record onto the
21 SD card?

22 A Yes.

23 Q Are you aware of whether or not the SD card had been taken
24 to be further analyzed to see if they can extract the
25 interview off of it?

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1 A Yes.

2 Q Was there any success?

3 A No.

4 And so they were able to see the practice videos I
5 described. Those were able to be found on there where he had
6 had me come in and he had tested to see if it would work. But
7 the actual interview was not on the disk.

8 Q On June 10th of 2015, so approximately 35 days later, was
9 the defendant arrested after he was indicted in connection
10 with this case?

11 A Yes.

12 Q And Mr. Koehler is going to start the equipment.

13 On that particular day was the defendant interviewed
14 again?

15 A Yes.

16 Q Before you interviewed him -- and let's back up a little
17 bit.

18 So he was arrested. Where was he arrested?

19 A He was arrested at a gas station located in the southwest
20 area of Phoenix. I can't recall the exact city. It's a
21 Valero gas station. But he was driving his moving truck and
22 he was pulled over and arrested.

23 Q And where did you conduct the interview?

24 A The interview was conducted at FBI headquarters which is
25 located in Phoenix.

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1 Q And who was it that was part of this particular interview?

2 A Again, it was myself and Detective Nash conducted the
3 interview.

4 Q Do you recall approximately what time of day it was?

5 A I don't recall off the top of my head because it was
6 indoors. And so I was managing the operation from indoors, so
7 I didn't --

8 Q Before you started the interview, obviously, at this point
9 the defendant is under arrest?

10 A Uh-huh.

11 Q Did you advise him of his rights?

12 A Yes.

13 Q And, Your Honor --

14 A Sorry. I do. It was in the morning, obviously, because
15 that's when -- the earlier morning hours to early afternoon
16 was when he was finally arrested I recall.

17 Q So the interview was in the morning or in the afternoon?

18 A The interview didn't take place until afternoon but he was
19 arrested sometime in late morning to early afternoon, so it
20 would have been just after that.

21 Q And have you had a chance to review clips 407 through 430.
22 Do they fairly and accurately represent the interview?

23 A Yes.

24 Q I spoke a moment ago. I asked you about the advisal of
25 rights. You said that you had given it to him.

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1 Your Honor, at this point the government is going to
2 move to admit and publish Exhibit No. 407.

3 MR. MAYNARD: Your Honor, due to completeness, I ask
4 that the entire interview be shown to the jury.

5 THE COURT: Well, you can certainly do that if you
6 wish. But I don't -- I don't know how long it is. I don't
7 know how many pauses there are in it. But I'm sure you have
8 the whole thing.

9 MR. MAYNARD: I have the disk and I don't know
10 exactly what clips the government is planning to show, for
11 certain reasons, and so --

12 THE COURT: I'm going to allow the government to
13 proceed. And if at a later point in time you want to show the
14 rest or the entire interview, you may do so. So you may
15 proceed. It's --

16 MS. BROOK: 407.

17 THE COURT: Well, are you going to offer all of them?

18 MS. BROOK: I am.

19 THE COURT: Isn't it 407 then through 430?

20 MS. BROOK: The government is going to be offering
21 407 through 422 and then 424 through 428 and 430.

22 MR. MAYNARD: Your Honor, again, having not seen the
23 clips, under 106 I would ask that they show it all. I just
24 haven't seen them.

25 THE COURT: Well, what you have seen is the entire

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1 interview.

2 MR. MAYNARD: Yes. Numerous times.

3 THE COURT: And I take it you do not doubt when
4 Ms. Book says that these are all excerpted from the
5 interview -- that same interview.

6 MR. MAYNARD: I don't have any reason to doubt
7 Ms. Brook.

8 THE COURT: Well, the objection is overruled.

9 407 through 422, 424 through 428 and 430 are
10 admitted.

11 (Exhibit Nos. 407, 408, 409, 410, 411, 412, 413, 414, 415,
12 416, 417, 418, 419, 420, 421, 422, 424, 425, 426, 427, 428,
13 and 430 admitted in evidence.)

14 MS. BROOK: Thank you, Your Honor.

15 And we're going to go ahead and play now the clip.

16 (Displaying video clip to the jury.)

17 BY MS. BROOK:

18 Q Did you ask him during the interview if he knew Elton
19 Simpson and Nadir Soofi?

20 A Yes.

21 MS. BROOK: Government is going to play Exhibit 408.

22 (Displaying video clip to the jury.)

23 BY MS. BROOK:

24 Q Did you ask him if he had heard of the Charlie Hebdo
25 attack?

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1 A Yes.

2 (Displaying video clip to the jury.)

3 BY MS. BROOK:

4 Q Did you ask him about Cochise?

5 A Yes.

6 Q And let's just take a step for a second. During the
7 course of this investigation, did you determine the date and
8 time when the defendant moved out of the house on Cochise?

9 A Yes.

10 Q When was that?

11 A It was sometime towards the middle of March 2015, possibly
12 toward the end.

13 Q And we've seen evidence in this case of the search warrant
14 that was conducted at the defendant's house on 21st Place.

15 About when after he moved out of the house on Cochise
16 did he move into that particular house?

17 A His lease began on April 1st of 2015 in the new house --
18 or in the new apartment, I should say, the one located on 21st
19 Place.

20 Q And then the search warrant was conducted on June 10th of
21 2015?

22 A Yes.

23 Q Did you ask him if he had heard Simpson and Soofi talk
24 about the Garland attack?

25 A Yes.

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1 (Displaying video clip to the jury.)

2 BY MS. BROOK:

3 Q What's the Dola?

4 A Well, I think al Dola is what he meant is the first "D" in
5 the acronym "DASH" which is the Arabic acronym for ISIS.
6 Islamic State. That it basically means the word "state" in
7 that acronym.

8 Q Did you ask him during the interview if looking back, he
9 thought that there were clues that they would attack?

10 A Yes.

11 Q And did he respond?

12 A Yes. He responded.

13 (Displaying video clip to the jury.)

14 BY MS. BROOK:

15 Q Did you ask him about the guns that Simpson and Soofi had
16 with them?

17 A Yes.

18 Q The guns during the attack?

19 A Yes.

20 (Displaying video clip to the jury.)

21 BY MS. BROOK:

22 Q So he stated initially that he went shooting with Simpson
23 and Soofi this one time about a year-and-a-half ago and then
24 towards the end of the interview said about a year ago?

25 A Yes.

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1 Q Did you follow up on that particular shooting event and
2 ask him about the guns that Simpson and Soofi brought that one
3 day he said where they all went shooting together?

4 A Yes.

5 (Displaying video clip to the jury.)

6 BY MS. BROOK:

7 Q Did you ask further questions to pinpoint exactly who
8 Sergio was that the defendant was talking about?

9 A Yes. Yes, I did.

10 (Displaying video clip to the jury.)

11 BY MS. BROOK:

12 Q Did you ask him if on that one day when they -- he is
13 saying that Simpson and Soofi and he went shooting, if Simpson
14 shot or fired a weapon when he was out there?

15 A Yes.

16 (Displaying video clip to the jury.)

17 BY MS. BROOK:

18 Q Did you ask him when this one time shooting event
19 occurred?

20 A Yes.

21 (Displaying video clip to the jury.)

22 BY MS. BROOK:

23 Q Did you also ask him where he had gotten the ammunition
24 that he shot that day?

25 A Yes.

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1 (Displaying video clip to the jury.)

2 THE COURT: Excuse me, Ms. Brook.

3 We're going to take our afternoon break.

4 Ladies and gentlemen, we will reconvene at a quarter
5 to 3:00. You are reminded of the admonition not to discuss
6 the case or form any conclusions about it until you have heard
7 all the evidence and begun your deliberations.

8 Court is in recess until quarter to 3:00. I'll
9 excuse the jury at this time.

10 (Open court, no jury present at 2:27 p.m.)

11 THE COURT: You may step down, Agent Whitson.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Mr. Koehler?

14 MR. KOEHLER: Your Honor, Mr. Maynard addressed the
15 issue of the rule of completeness.

16 The government will object to the defendant offering
17 up self-serving hearsay from the other portions of the
18 interview unless he can show that they are somehow directly
19 tied to something being taken out of context.

20 THE COURT: I note that you have a transcript that
21 you have running with these various film clips.

22 Do you have a transcript of the entire interview?

23 MR. KOEHLER: Yes. And it was disclosed to the
24 defense.

25 THE COURT: That's fine. But I was going to ask that

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1 you give it to me so that I am prepared when Mr. Maynard asks
2 to play other parts of the interview.

3 MR. KOEHLER: We will get that for you, Your Honor.

4 One thing I wanted to bring up specifically about
5 that, during the course of the interview, the subject of the
6 molestation accusations comes up.

7 And the defendant goes into some fairly lengthy
8 detail explaining why, you know, this accusation was false and
9 so on.

10 I'm assuming he doesn't want to play that part of the
11 interview, but perhaps I'm wrong.

12 THE COURT: Well, why don't you provide me with the
13 transcript.

14 MR. MAYNARD: Well, Judge, I believe -- I don't think
15 we have a transcript that's like this that's a video --

16 THE COURT: No. I'm asking for a transcript -- I
17 don't want to watch the interview because I can read it
18 faster. I'm asking just for the transcript.

19 MR. KOEHLER: We will get that to you, Your Honor.

20 MS. BROOK: Your Honor, just one other unrelated
21 issue, but since we have everyone gathered without the jury, I
22 noted again this morning, and additionally, yesterday
23 afternoon again, that Juror No. 3 is sleeping.

24 She was not catching her head this morning, but she
25 was absolutely, in my opinion, her eyes were closed for

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1 prolonged periods, not making any eye contact or having any
2 direct contact with the witness and was staring down at the
3 screen during periods in which there was nothing on the
4 screen.

5 I just wanted to make that observation.

6 THE COURT: That is consistent with my observations
7 as well.

8 MS. BROOK: I wanted to reurge what we brought up two
9 days ago regarding removing that particular juror.

10 MR. MAYNARD: I reluctantly agree.

11 THE COURT: Well, what I would propose --
12 So let me be clear.

13 MR. MAYNARD: Because we have noticed she is sleeping
14 the last two days.

15 THE COURT: So both the government and defense
16 counsel agree that I should excuse Juror No. 3; is that
17 correct, Ms. Brook?

18 MS. BROOK: Yes.

19 THE COURT: Mr. Maynard?

20 MR. MAYNARD: Yes.

21 THE COURT: What I will do to avoid any embarrassment
22 to Juror No. 3 is that I'm going to ask Maureen to discreetly
23 ask her to stay behind when we recess at the end of the day.

24 And I will have her in my -- ask her into my office
25 and just she and I -- and I will excuse her not on the record

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1 and not with all of the rest of you present.

2 MS. BROOK: Thank you, Your Honor.

3 MR. MAYNARD: That's fine.

4 MR. KOEHLER: Your Honor, there was one very minor
5 detail. I neglected to walk through a few exhibits with
6 Mr. Meshinsky before we finished.

7 THE COURT: He will be back.

8 MR. KOEHLER: Correct. And I spoke to Ms. Plomin.
9 She has graciously agreed that I may go back into that with
10 him before she begins her cross on Tuesday.

11 THE COURT: Okay. And then are we still -- I had on
12 the list for today Ms. Ahmadi.

13 Is she going to be testifying?

14 MR. KOEHLER: We needed to line up a Dari interpreter
15 for her. And because of that, we decided to push her to
16 Tuesday. And I apologize for not notifying the Court first
17 thing about that.

18 We may decide not to call her at all, but we're going
19 to dwell on that. But if we do, it will be Tuesday.

20 THE COURT: I heard her name finally and she's just
21 someone else that worked in this same restaurant?

22 MR. KOEHLER: That is correct.

23 THE COURT: Okay. All right. Anything else?

24 MR. KOEHLER: No, Your Honor.

25 THE COURT: Okay. We will reconvene at a quarter to

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1 3:00.

2 (Recess taken at 2:32 p.m.; resumed at 2:48 p.m.)

3 (Open court, jury present.)

4 THE COURT: Thank you, ladies and gentlemen. Please
5 sit down. The record will show the presence of the jury,
6 counsel, and the defendant.

7 Ms. Brook, you may continue.

8 MS. BROOK: Thank you, Your Honor.

9 BY MS. BROOK:

10 Q So we left off -- and, I think, the last thing I asked you
11 before we were about to play a clip -- was did you ask the
12 defendant if he ever went shooting with Simpson and Soofi
13 together on any other occasion other than this one time that
14 he had talked to you about?

15 A Yes.

16 (Displaying video clip to the jury.)

17 BY MS. BROOK:

18 Q Also -- and I skipped over it by accident right before we
19 got to this clip -- did you ask him how well Simpson and Soofi
20 shot that day when he was talking about them shooting with
21 Sergio?

22 A Yes.

23 (Displaying video clip to the jury.)

24 BY MS. BROOK:

25 Q During the interview did the defendant talk more about

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1 Sergio?

2 A Yes.

3 (Displaying video clip to the jury.)

4 BY MS. BROOK:

5 Q Did you ask the defendant if he knew of or believed in the
6 Khalifah or the khalif?

7 A Yes.

8 Q And just to refresh our memory a little bit, who exactly
9 is the Khalifah or the khalif?

10 A Well, the idea of the khalif is to be the leader of the
11 Ummah or the community of Muslims throughout the world.

12 And currently, Abu Bakr al Bagdadi has claimed
13 himself to be the Khalifah of the Ummah and he is the current
14 leader of the Islamic State.

15 Q And, again, who are the only people that believe that the
16 khalif or the Khalifah presently exist?

17 MR. MAYNARD: Objection. Foundation.

18 THE COURT: Sustained.

19 MS. BROOK: We can handle that through another
20 witness but we're going to move on and play 422.

21 (Displaying video clip to the jury.)

22 BY MS. BROOK:

23 Q Did you ask the defendant more about moving out of
24 Cochise?

25 A Yes.

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1 Q And also about how often or how much he would see Simpson?

2 A Yes.

3 (Displaying video clip to the jury.)

4 BY MS. BROOK:

5 Q Did you ask the defendant if he knew about the Draw the
6 Prophet Muhammad contest in Garland, Texas, before the attack?

7 A Yes.

8 (Displaying video clip to the jury.)

9 BY MS. BROOK:

10 Q Did you show him a picture of Stephan Verdugo and ask him
11 if he knew him?

12 A Yes.

13 (Displaying video clip to the jury.)

14 BY MS. BROOK:

15 Q Did the defendant admit to you that he possessed and he
16 owned guns?

17 A Yes.

18 (Displaying video clip to the jury.)

19 BY MS. BROOK:

20 Q Did you ask him about his relationship with Simpson in the
21 days before the attack?

22 A Yes.

23 (Displaying video clip to the jury.)

24 BY MS. BROOK:

25 Q Did you ask the defendant if he had ever bought ammunition

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1 with Simpson before?

2 A Yes.

3 (Displaying video clip to the jury.)

4 BY MS. BROOK:

5 Q Did you ask the defendant if he previously had been
6 convicted of a felony?

7 A Yes.

8 (Displaying video clip to the jury.)

9 BY MS. BROOK:

10 Q And if we can switch it back to the Elmo. Thank you so
11 much.

12 In the course of the investigation in this case, did
13 you execute search warrants on Google search history of the
14 defendant?

15 A Yes. I served two search warrants on his Gmail account
16 gitrdonemoving@gmail.com?

17 Q And did that also produce Google search history as well?

18 A Yes.

19 Q In your analysis of the search warrant returns and the
20 defendant's computer as well, did you find evidence of erased
21 computer history?

22 A Yes. I found evidence that -- that someone had gone into
23 that "gitrdonemoving" Gmail account and erased the search
24 history inside that account.

25 Q And explain that. How did you find that?

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1 A Well, so to back up, I had served two separate search
2 warrants.

3 The first one arrived back in early June of 2015.
4 And when I reviewed that search warrant return, I saw there
5 was only a list of one group of searches done on a single day
6 and I believe it was May 21st of 2015.

7 When I served a second search warrant upon that same
8 company and I looked at the search history inside the Google
9 account, I noticed that that day 5/21 was no longer visible.
10 And instead, there was only days through, I believe, June 6th
11 through on or about June 9th of 2015.

12 And so by -- and one other thing to state.

13 In both of those search warrants returns, there's a
14 line in there where it says about the search history. And
15 then it will say "true" or "false." If it says "true" on that
16 line, that mean that it's saving your history in Google. If
17 it says "false," which you can go into your Google account and
18 turn that off, then it will not save that history.

19 And so because I saw that listed as "true," I knew
20 that the user of that e-mail account did not turn that
21 function off.

22 So in other words, the Google account would be saving
23 their search history. And so by looking at all that data
24 together, I was able to conclude that he had gone in and
25 erased his Google search history sometime after that 5/21 date

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1 because it was no longer there when I saw it the next time.

2 Q So let me just be clear. So there were two separate
3 captures of the Google search history?

4 A Uh-huh.

5 Q And what we're referring to specifically, is it the
6 Internet browsing history?

7 A No. And so basically when you go into Google when you're
8 signed in, whether you know it or not, if you're still logged
9 onto your Google account -- say you have checked your Gmail
10 and you haven't logged out -- Google continues to track your
11 search history.

12 And so what also happens on your computer is your
13 Internet browser tracks your search history. And so most
14 people know in that Internet browser, that's that box when
15 you're looking at the Internet and you see the line across.

16 And sometimes if you'll hit that arrow, drop an
17 arrow, you'll see places you visited. Or you can delete --
18 there will be a button there to delete your browsing history.

19 Well, a lot of people know to delete that. But what
20 they might not know is in order to delete the records on their
21 Google account, they actually have to go into Google and do a
22 extra step, and that's actually log into their Google Gmail
23 account and erase it there as well.

24 So analysis of these search warrants showed me that
25 that person had taken that extra step. So not only had they

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1 erased the browsing history, but they had actually known or at
2 least cared enough to go into their Google account and
3 actually do it, and again, on more than one occasion based on
4 my analysis.

5 Q And you could tell that because the second capture of
6 Google Internet history did not provide search history that
7 the first capture did?

8 A Yes.

9 Q I want to talk to you about the gitrdonemoving@gmail.com
10 e-mail address. Did you too execute a search warrant on that
11 particular e-mail address?

12 A Yes. Those were the two search warrants that I described
13 moments ago.

14 Q And I want to speak specifically about a particular
15 e-mail.

16 Did you find an e-mail that was sent to
17 gitrdonemoving@gmail.com on November 9th of 2014?

18 A Yes.

19 Q And in the course of your investigation, was that e-mail
20 relevant?

21 A Yes.

22 Q Can you explain that?

23 A Yes. It was an e-mail that was forwarded from Elton
24 Simpson.

25 It was a letter from Elton Simpson's probation

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1 officer detailing travel restrictions related to Elton
2 Simpson.

3 And so what the records show is that Elton Simpson,
4 without putting the message, had just forwarded that e-mail he
5 had received from his probation officer, directly to the
6 e-mail address gitrdonemoving@gmail.com.

7 Q So let's take a step back and rewind for a minute.

8 So back in November of 2014, have you become aware
9 through the course of this investigation, that Elton Simpson
10 was on federal probation and had a probation officer?

11 A Yes.

12 Q And was that officer an individual by the name of Angela?

13 A I don't recall her name.

14 Q Okay. I'm going to place on the overhead what has not yet
15 been admitted but is marked as Government's Exhibit No. 190.

16 And in looking at this particular exhibit, what do
17 you see?

18 A This is the letter I just spoke about and it's --

19 Q I'm going to go ahead and scroll to the top so you can see
20 that as well.

21 Does it fairly and accurately represent the e-mail
22 that you saw subject to the execution of this search warrant?

23 A It does.

24 MS. BROOK: The government moves to admit and publish
25 190.

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1 MR. MAYNARD: No objection.

2 THE COURT: 190 is admitted.

3 (Exhibit No. 190 admitted in evidence.)

4 BY MS. BROOK:

5 Q Starting from the top, let's go ahead and scroll. I know
6 the type is really small. Who was this e-mail from?

7 A The sender is Ibrahim at e-mail address
8 ibrahimibrahim602@gmail.com.

9 Q And who is it sent to?

10 A It was sent to gitrdonemoving@gmail.com.

11 Q And just so we're all on the same page, who have you
12 determined through the execution of these search warrants is
13 the owner of that e-mail account?

14 A I have been able to determine the user of both accounts
15 through search warrants. But the gitrdonemoving@gmail.com is
16 owned by Mr. Kareem. It's his account.

17 Q And the owner of the first e-mail account Ibrahim?

18 A Was Elton Simpson's e-mail account.

19 Q You spoke about the date already. Do you see the date
20 there listed at the top?

21 A Yes.

22 Q What is that?

23 A It's 9 November, 2014.

24 Q And as we look at the text, so pulling it down, do you see
25 attached to it an e-mail sent to Ibrahim forwarded to the

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1 defendant from his probation officer Angela?

2 A Yes.

3 Q Can you read it to us, please?

4 A Yes. It says:

5 I just reviewed your judgment and there is nothing as
6 far as travel restriction. I am not sure why you were stopped
7 from getting on the plane. Did they give you a reason at the
8 time? What they did say was -- what did they say was the
9 reason you were stopped? As far as I am concerned, as long as
10 you comply with the ten business days' notice and you get
11 approval from me for domestic travel, I do not see why you
12 cannot go. Out of the country is a different procedure and
13 takes longer. Hope that helps. Thanks.

14 Q So bottom line, communication through this e-mail, does it
15 express that Ibrahim needs to have approval from his probation
16 officer in order to travel domestic or foreign?

17 A Yes. It's approval to travel foreign and has to provide
18 at least ten-day notice to travel domestically.

19 Q I want to turn back to the Maxwest cell phone of the
20 defendant that was seized inside the cab of his truck on June
21 10th. That particular cell phone, what was it identified by
22 in the lab? What QPX number did they give it?

23 A It was known as QPX4.

24 Q I'm going to place on the overhead what has not yet been
25 admitted yet, Government's Exhibit 486.

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1 Do you recognize what's in this photo?

2 A I do.

3 Q And what is it?

4 A It's a picture of Elton Simpson with his cell phone in his
5 hand taken in an unknown restaurant.

6 Q Where was this photo extracted from? What device?

7 A This photo was extracted from QPX4, the Maxwest cell
8 phone.

9 MS. BROOK: Your Honor, the government moves to admit
10 and publish 486.

11 MR. MAYNARD: No objection.

12 THE COURT: 486 is admitted.

13 (Exhibit No. 486 admitted in evidence.)

14 BY MS. BROOK:

15 Q Moving on to 487, not yet admitted government's 487.

16 Do you recognize that?

17 A Yes.

18 Q And what do you recognize it as?

19 A This is another picture of Elton Simpson with his cell
20 phone and, again, in a restaurant that I do not know which
21 restaurant that is. It was taken on the QPX4 Maxwest cell
22 phone.

23 MS. BROOK: Government moves to admit and publish
24 486 -- I'm sorry -- 487.

25 MR. MAYNARD: No objection.

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1 THE COURT: 487 is admitted.

2 (Exhibit No. 487 admitted in evidence.)

3 BY MS. BROOK:

4 Q We've spoken in this case extensively about the Acer
5 computer laptop that was found in the defendant's house on
6 June 10th. We've heard testimony about the Flames of War
7 video that was captured and accessed on the Acer computer as
8 well as downloaded onto the Acer computer.

9 MR. MAYNARD: Objection to the form of the question,
10 Your Honor.

11 THE COURT: Sustained.

12 BY MS. BROOK:

13 Q Have you had a chance to review Government's Exhibit No.
14 471?

15 A Yes.

16 Q And does 471 fairly and accurately reflect the video
17 Flames of War?

18 A Yes.

19 Q Obviously, as part of that, have you had an opportunity to
20 review the full video in its entirety?

21 A Yes.

22 Q Can you provide us just a general description of that
23 video?

24 A Yes, I can.

25 Flames of War is a propaganda video that was

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1 published by the Islamic State in September of 2014. It's a
2 55-minute long film. It's almost two films put together. The
3 first part of it is what I would describe as the Islamic
4 State's version of history starting with the US-led invasion
5 of Iraq, the way they see how that history has played out to
6 their current position.

7 And then the end of the video includes a scene from
8 an Islamic State member performing -- he actually delivers a
9 speech too the West and then executes a number of Syrian
10 soldiers after they had dug their own grave and then executes
11 them upon the completion of his speech.

12 MS. BROOK: We'll save for a later time discussion of
13 the significance and role of that particular video, but at
14 this point the government moves to conditionally admit 471
15 subject to discussions later about 403.

16 MR. MAYNARD: No objection.

17 THE COURT: 471 is admitted.

18 (Exhibit No. 471 admitted in evidence.)

19 BY MS. BROOK:

20 Q In reviewing the defendant's Acer computer, did you also
21 find evidence of Anwar al-Awlaki lectures that were downloaded
22 onto that computer?

23 A Yes.

24 Q How many?

25 A At least five al-Awlaki lectures were downloaded on the

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1 Acer Aspire laptop.

2 Q And can you talk to us about the time frame.

3 What are the earliest downloads of the al-Awlaki
4 lecture onto the Aspire laptop of the defendant's?

5 A Well, of the five, the data that still remains on the Acer
6 only provides dates for two of the five and both of those were
7 in August of 2015.

8 Q Is it August of 2013?

9 A Yes. It was actually August of 2013. Sorry. I misspoke.

10 Q And you stated that the computer only retains the download
11 dates for those two?

12 A Yes. That's all that remains on the computer at the time
13 when we searched it.

14 Q So can you explain what that means?

15 A Yes. So any time someone obviously -- it's kind of been
16 explained a couple times. But anytime someone downloads
17 something on their computer, an image of that is saved on the
18 computer.

19 And then once they delete that image, it goes into
20 another area of the computer. It doesn't leave the computer,
21 but it just goes to that area. And the computer can then
22 write over that when it needs to save other files.

23 And the computer, when it decides to write over that
24 other area, it doesn't do it in an organized fashion. It
25 doesn't just write over this document first and then move on

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1 to the next one. It just kind of randomly picks space and we
2 call it that "unallocated space."

3 And so that's why when things have been deleted,
4 you'll find fragments of it. So fragments of the metadata
5 that might not include the address when it was created or
6 other things like that.

7 And so that was the case with these. There were only
8 two where we could see that date and we can confidently say
9 those were downloaded on or about August of 2013.

10 The remaining three we simply do not know the date
11 that those were viewed or downloaded.

12 Q Have you had an opportunity to review Exhibit No. 184?

13 A Yes.

14 Q Now, we're going to come back to that.

15 So moving along, I want to talk about the defendant's
16 Nextbook tablet that was found inside of his truck on June
17 10th of 2015.

18 Placing on the overhead Exhibit No. 459 already
19 admitted, looking at the thumbnail that was the remaining
20 remnant of the image on this particular tablet, based upon
21 your training and experience, do you recognize this image?

22 A Yes.

23 Q And what do you recognize it as?

24 A This is a screencap of an ISIS propaganda video that was
25 released on or about 28 August of 2014 entitled A Message In

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1 Blood To The Leaders Of The Kurdish American Alliance.

2 Would you like me to continue?

3 Q Please.

4 A You can see in the background there's a mosque in the
5 background. That's actually the Great Mosque in Mosul in
6 Iraq. And you can see there's an Islamic State flag to the
7 right of the third -- I guess you would call them Islamic
8 State mujahideen fighter in the back that you can kind of see
9 it.

10 What you can't see on this imagine, if it was the
11 actual video were you to watch it, there's another black
12 Islamic State flag that's digitally enhanced that's put on the
13 screen in the top-left corner but you can't see that on this
14 version. You would see that if you were actually watching
15 this video.

16 Q So the image itself is a still frame from the video
17 itself?

18 A Yes.

19 Q You also mentioned the release date of the video. What
20 was that?

21 A It was on or about August 28th of 2014.

22 Q We have talked about another tablet, the RCA tablet.

23 A Yes.

24 Q On that particular tablet was Origins of the Islamic State
25 found?

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1 A Yes.

2 Q And can you explain for us what Origins of the Islamic
3 State is?

4 A I guess you could describe it as a treatise on the
5 conquests of the Prophet Muhammad be upon him and it's an
6 older work that was published in or about 1916 is when it was
7 actually translated it from Arabic to English. That's about
8 it.

9 Q So it's a treatise?

10 A Yes.

11 Q And was it found in its entirety?

12 A Yes.

13 Q Can we please hand the witness Exhibit No. 196.

14 In the execution -- well, in the course of the
15 investigation of this particular case, did FBI execute a
16 search warrant on BMO Harris Bank, and specifically, the
17 defendant's account held with them?

18 A Yes.

19 Q I have handed you Exhibit No. 196. Do you recognize that?

20 A Yes.

21 Q And what do you recognize it as?

22 A This is a grand jury subpoena that was issued to BMO
23 Harris Bank and it's listed Abdul Malik Abdul Kareem, so any
24 accounts belonging to or utilized by Abdul Malik Abdul Kareem.

25 Q And when the bank executes a search warrant and then

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1 returns the compliance to you, does that compliance include
2 the data transactions creation of the account itself?

3 A Yes.

4 Q And did you find any transaction or event relevant to the
5 investigation as it relates to those documents?

6 A Yes. There was two pieces of information that I think are
7 relevant.

8 Q What was the first?

9 A The first one was on or about November 10th of 2014, Abdul
10 Malik Abdul Kareem opened this account depositing \$10,000
11 cash.

12 Q And what was the second?

13 A The second was on or about November 13th of 2014, so just
14 three days later, Mr. Kareem withdrew \$5,000 cash.

15 Q You made mention when you started speaking about the first
16 relevant fact that the opening of this account in and of
17 itself was relevant. Explain that.

18 A Mr. Kareem already possessed more than one bank account.
19 Some had been -- kind of languished. But there was another
20 account he was using. So that we found that interesting,
21 whereas, you know, most people would just deposit money into
22 their existing account.

23 The fact that he created a new account at a new bank
24 he had not banked with prior to this date and that he then
25 withdrew \$5,000 of the cash right away following that deposit.

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1 Q If we could please hand to the witness Exhibit No. -- and
2 there's four of them but we can do them one at a time.

3 The first is 472. May I approach the clerk?

4 THE COURT: Yes.

5 BY MS. BROOK:

6 Q So you have been handed Exhibit No. 472 which has already
7 been admitted and we have spoken about it. What is 472?

8 A 472 is two copies of fingerprints taken for Mr. Kareem.
9 And looks like one copy with the dates printed were October 20
10 of 2015 and the other copy, the date printed -- well, this is
11 the date printed here, so it was June 15, 2015.

12 One second if I can further analyze. I want to
13 confirm that this may be the same. Yes. This is a copy of
14 the one below it, it looks like.

15 Q And I'm going to place on the overhead what has not yet
16 been admitted as -- I'm sorry. It has been admitted. 472.

17 So as we look at this particular exhibit, were you
18 present when the defendant Abdul Malik Abdul Kareem's prints
19 were rolled and placed onto this particular card?

20 A Yes.

21 Q And do you recall when that happened?

22 A I don't recall the exact date, but I can see that there
23 may be a date on it. But I don't recall off the top of my
24 head the date when we took this.

25 Q Okay. And was there one time, one occurrence, where you

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1 were present with the defendant when his prints were rolled?

2 A Yes.

3 Q Just for completeness, I'm going to put it back on the
4 overhead for a moment. And as we scroll in -- and, Your
5 Honor, this particular exhibit was conditionally admitted, so
6 we would just move to fully admit it at this point.

7 MR. MAYNARD: No objection.

8 THE COURT: To the extent that it was conditionally,
9 it is now admitted.

10 (Exhibit No. 472 admitted in evidence.)

11 BY MS. BROOK:

12 Q And looking at this particular exhibit we see notes
13 related to an FBI Laboratory Print Identification Comparison,
14 correct?

15 A Yes.

16 Q And that's the verified 10/21/15?

17 A Yes.

18 Q Turning next to Exhibit No. 139 which you have before you.

19 Do you recognize 139?

20 A Yes. This is the certified copy of the Judgment and
21 Conviction for Mr. Kareem's 2004 DUI arrest. It's a Class 4
22 felony.

23 MS. BROOK: And, again, so government moves --

24 I believe this too was conditionally admitted. 139.

25 THE COURT: Correct.

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1 MS. BROOK: So the government would move to
2 unconditionally admit it.

3 MR. MAYNARD: No objection.

4 THE COURT: So ordered.

5 (Exhibit No. 139 admitted in evidence.)

6 BY MS. BROOK:

7 Q The copy that you have there before you, is that a
8 certified copy with a raised seal on the back page as well as
9 it being stapled together?

10 A Yes.

11 MS. BROOK: Your Honor, may I publish?

12 THE COURT: Yes.

13 BY MS. BROOK:

14 Q So in looking at the first page, can you see that it is
15 the Judgment of the Court?

16 Defendant is guilty of the following:

17 Offense Count 1. Aggravated Driving or Actual
18 Physical Control While Under the Influence of Intoxicating
19 Liquor or Drugs, a class 4 felony?

20 A Yes.

21 Q And are you aware that a Class 4 felony in the State of
22 Arizona is punishable by more than one year in prison?

23 A Yes.

24 Q Additionally, I'm going to turn to the last page.

25 Looking at the last page of that document, can you

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1 see that there's a fingerprint?

2 A Yes.

3 Q And that fingerprint too has an identified stamp,
4 laboratory signature by the FBI, stating that it has been
5 compared.

6 A Yes.

7 Q And are you aware in this case, as there's already been
8 testimony, that that fingerprint on that last page was
9 compared and identified to the defendant Abdul Malik Abdul
10 Kareem?

11 MR. MAYNARD: Objection, Your Honor. It's leading.

12 THE COURT: Sustained.

13 BY MS. BROOK:

14 Q Are you aware of who that fingerprint on the last page of
15 the Judgment and Commitment Order was identified to belong to?

16 THE WITNESS: Yes.

17 MR. MAYNARD: Objection. Lack of foundation.

18 THE COURT: Sustained.

19 BY MS. BROOK:

20 Q It's already been testified to, so we will move on.

21 I would just like for you for a moment to read to us
22 the social security number in evidence there.

23 A 183-54-9922.

24 Q Moving along to Exhibit 140 which you have before you, do
25 you recognize that? I'll give you a chance to look at it.

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1 A Yes.

2 Q And what do you recognize it as?

3 A This is a certification -- certified copy of Mr. Kareem's
4 birth certificate and it actually has two copies.

5 It has one under the name of Decarus Lowell Thomas
6 and it has another certification for birth of Abdul Malik
7 Abdul Kareem signifying that they are one in the same person.

8 MS. BROOK: The government moves to admit and publish
9 140.

10 MR. MAYNARD: No objection.

11 THE COURT: 140 is admitted.

12 (Exhibit No. 140 admitted in evidence.)

13 BY MS. BROOK:

14 Q Where does it state where he was born?

15 A It says Philadelphia.

16 Q Moving along to Exhibit 141, do you recognize that once
17 you get a chance to look at that?

18 A Yes.

19 Q And what is it?

20 A This is a certified copy of an Order changing the name of
21 an adult. The applicant's name is Decarus Lowell Thomas and
22 the name being changed to is Abdul Malik Abdul Kareem.

23 Q And certified is a raised seal and is it stapled?

24 A There's a raised seal, and, yes, it's stapled.

25 MS. BROOK: Government moves to admit 141.

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1 MR. MAYNARD: No objection.

2 THE COURT: 141 is admitted.

3 (Exhibit No. 141 admitted in evidence.)

4 BY MS. BROOK:

5 Q I want to change subjects a little bit and discuss part of
6 your investigation.

7 So in this case we've heard testimony and talked
8 about going out to the Wittmann area to look at the desert and
9 take pictures and examine the scene.

10 Were you able to go out to the Table Mesa desert area
11 also testified to to go out and examine that particular desert
12 area?

13 A I did not personally do that, but members of our team
14 attempted to locate that area but were unable to locate an
15 area that we could say they actually shot at.

16 Q And based upon your training and experience, are you
17 familiar with the topography and the range area that's out
18 there in Table Mesa?

19 MR. MAYNARD: Objection, Your Honor. He just said he
20 didn't go out there.

21 THE COURT: She's asking if he is familiar with that
22 area of Arizona.

23 MR. MAYNARD: Okay.

24 THE WITNESS: I am familiar with that area.

25 BY MS. BROOK:

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1 Q Can you explain what that range area looks like?

2 A Yes. It's just arid desert, mountains, and there's a
3 winding road that goes through that area and there's a number
4 of spots off the side of the road where anyone can go off to
5 the side of the road and shoot.

6 And so, again, there was a number of locations where
7 that could have taken place, but not that we could
8 definitively say the group had been into.

9 Q And based upon your training and experience, is that a
10 very --

11 Well, is it a place that has a more populated shell
12 area?

13 MR. MAYNARD: Objection. Lack of foundation.

14 THE COURT: Sustained.

15 BY MS. BROOK:

16 Q I want to talk for a minute about your training and
17 experience as it relates to firearms and operating firearms
18 within the capacity of the FBI as well as within the United
19 States military.

20 Is that something that you were trained to do back
21 when you were working for the military as well as when you
22 worked for the FBI?

23 A Yes.

24 Q And is it something that --

25 Well, explain to us a little bit about that.

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1 A Well, from my military experience, I started as a basic
2 enlisted person, a private. So that's our entire life centers
3 around weapons and things like that.

4 And then later when I became an officer, I was taught
5 more about weapons, about properly maintaining them,
6 disassembling, reassembling them, that kind of things. But
7 then also being able to teach that to my soldiers and/or have
8 my -- we call them NCOs, but they would teach the classes too
9 and I would help oversee that.

10 On the FBI side of things, I was a member of the SWAT
11 Team for three years. And so, obviously, I trained quite
12 extensively with weapons and things like that, again, knowing
13 how to properly disassemble them, to clean them and maintain
14 them properly so they will work, to then properly lubricate
15 them so that they will continue to function, and then to
16 properly reassemble them so that they can function when
17 needed.

18 Q Explain to us the purpose of properly lubricating a
19 weapon.

20 A Well, depending -- well, all weapons which have moving
21 parts, they're metal parts that rub against one another. And
22 so lubrication is often needed, obviously, to help limit the
23 friction that happens between those moving parts. So that's
24 generally the reason why you lubricate.

25 The other reason, obviously, is rust. So because the

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1 weapon is made primarily of metal, if moisture gets inside the
2 components, especially the internal components that you can't
3 see, then that can create rust which could obviously cause the
4 weapon to either malfunction or not operate properly later on.

5 Q So what happens to a weapons's firing capability if it's
6 not properly lubricated and maintained?

7 A It diminishes. Its capability diminishes if it's not
8 properly maintained.

9 Specific things that could happen, it could lock up.
10 The weapon could actually go as far as to break, obviously, if
11 some part became corroded or broke because it wasn't
12 maintained.

13 But the other kind of more common thing is the weapon
14 could just jam. And that's when as a -- you know, as a weapon
15 is firing, when one round is fired, you know, especially with
16 semiautomatic rifles and things like that -- when one round is
17 fired, that causes the next round to then come up into the
18 chamber and so those parts are moving. And if the components
19 of the weapon aren't properly lubricated and aren't moving
20 properly, then that can mess up that function as far as the
21 round being able to come up.

22 And what will happen is it will just jam. You'll
23 fire one shot and then you'll kind of get a lock. You'll have
24 to clear that weapon. Actually, take the magazine out, clear
25 it, and then reload it and start over.

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1 Q When you were in the military conducting trainings on
2 properly maintaining and working with weapons, did you teach
3 other people how to lubricate weapons?

4 A Yes, I did.

5 Q Did you teach other people how to break weapons down?

6 A Yes, I did.

7 Q Did you teach other people how to reassemble weapons?

8 A Yes, I did.

9 Q Is it a skill?

10 A Yes. It is a skill.

11 MS. BROOK: May I have one moment?

12 THE COURT: Yes.

13 MS. BROOK: We have one last thing but it might take
14 just a moment for me to find. Exhibit No. 98.

15 Your Honor, may I ask the agent to come down? He is
16 much more familiar --

17 THE COURT: Did you say 98?

18 MS. BROOK: Yes. 98, 100, and 101.

19 THE COURT: Yes. Go ahead. They are CDs if you need
20 a hint.

21 MS. BROOK: Thank you.

22 Sorry about the delay. May I approach?

23 THE COURT: Yes.

24 BY MS. BROOK:

25 Q Showing -- I'm showing the witness what's been previously

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1 marked and admitted as Exhibit No. 98, 100, and 101.

2 Do you recognize those?

3 A I do.

4 Q And what do you recognize them as?

5 A These are three separate CDs with lectures of Sheikh
6 Faisal who we had spoken about earlier, the Jamaican-based
7 salafi scholar whom the defendant had said Elton Simpson may
8 have been inspired by during the first interview.

9 And so there's three separate disks that were
10 discovered inside the Simpson/Soofi apartment on 19th Avenue.

11 MS. BROOK: Your Honor, we have one last exhibit for
12 the defendant -- or I'm sorry -- for the witness to look at
13 and it's a spreadsheet related to the data on the Acer and
14 we're just trying to identify it.

15 BY MS. BROOK:

16 Q And, Special Agent Whitson, as part of your notes up
17 there, do you have the spreadsheet on the Acer?

18 A Are you looking for the Internet search history for the
19 Acer?

20 Q Correct.

21 A Yes. I do have a copy here of that.

22 Q Okay. And what I just wanted to marry up and discuss for
23 a moment was to come back to those Sheikh Faisal lectures.

24 We've now looked at the three exhibits, the Sheikh
25 Faisal lectures identified in Simpson and Soofi's house. And

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1 I wanted to discuss for a moment the download of those
2 lectures or the data that was left behind on the Acer computer
3 related to Sheikh Faisal.

4 A Okay.

5 Q Do you have information about that download or the
6 information that was left behind about Sheikh Faisal on the
7 Acer?

8 MR. MAYNARD: Judge, I'm going to object at this
9 time. He's going to be relying upon a document we really have
10 never had.

11 THE COURT: Has this spreadsheet been given to
12 Mr. Maynard?

13 MS. BROOK: Yes. And he has before him his reports
14 which have all been disclosed.

15 THE COURT: So your question, again, Ms. Brook?

16 BY MS. BROOK:

17 Q The data that was found or identified on the Acer computer
18 as it relates to Sheikh Faisal, can you explain what the data
19 was?

20 MR. MAYNARD: Judge, again, objection.

21 Whatever we have been given, we just got and we sent
22 it to our expert to look at. I can't read it.

23 MS. BROOK: And, Your Honor, this is all discussed in
24 Evan Kohlmann's report extensively.

25 THE COURT: Okay. Since Agent Whitson isn't going

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1 anywhere, he's going to be with us through the rest of the
2 trial, we're going to defer until Mr. Maynard has had a chance
3 to have somebody interpret this for him.

4 MS. BROOK: Sounds good.

5 Your Honor, I'm just confirming.

6 I don't have any other questions.

7 THE COURT: Mr. Maynard.

8 MR. MAYNARD: Judge, is it possible -- I mean, I have
9 to get reorganized to start cross-examining. There's been a
10 lot of information.

11 THE COURT: Is what possible?

12 MR. MAYNARD: Take an early break today?

13 THE COURT: You mean recess until Tuesday at 9:00?

14 MR. MAYNARD: Yes.

15 THE COURT: Are there any objections?

16 I see no objections from the jury.

17 So, ladies and gentlemen, we will recess until nine
18 o'clock on Tuesday morning.

19 You are reminded again of the admonition not to
20 discuss the case among yourselves or with anyone else.

21 Please remember that you are not to communicate any
22 information about this case to anyone. The only thing you can
23 say is that you're selected to sit on a jury, the case could
24 last up to three more weeks, and you can't tell them anything
25 else about the case until the trial is over.

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1 Once, again, no research, no investigation about the
2 case on your own, and finally, please do not form any
3 conclusions about the case until you have heard all the
4 evidence and begun your deliberations.

5 Court is in recess until nine o'clock Tuesday
6 morning, March 1st.

7 (End of Excerpt of Proceedings.)

8 * * *

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C E R T I F I C A T E

I, ELIZABETH A. LEMKE, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 8th day of March, 2016.

s/Elizabeth A. Lemke
ELIZABETH A. LEMKE, RDR, CRR, CPE